IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

The Florida Bar,

Complainant,

v.

F. Lee Bailey,

Respondent,

Case No. SC96767
TFB Number
1996-51,085(15B)
1997-50,110(15A)

AMENDED REPORT OF REFEREE

I. *Summary of Proceedings:* Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, hearings were held on the following dates May 30 through June 5, 2000:

The following attorneys appeared as counsel for the parties:

For The Florida Bar: David R. Ristoff, Esq.
Debra J. Davis, Esq.
Terrance E. Schmidt, Esq.

For The Respondent: Don Beverly, Esq.
F. Lee Bailey, Esq.

Symbols and References:

In this report filed by the Referee, The Florida Bar, Complainant, will be referred to as **"The Florida Bar"**. The Respondent, F. Lee Bailey will be referred to as **"Respondent."**

"**TR**" will refer to the transcript of the final hearing before the Referee in the instant case Supreme Court Case No. SC96767, held May 30, 2000 through June 5, 2000.

"**Ex.**" will refer to Exhibits presented by The Florida Bar and the Respondent at the final hearing before the Referee in the instant case.

"**Rule**" or "**Rules**" will refer to the Rules Regulating The Florida Bar. "**Standards**" **or** "**Standards**" will refer to Florida Standards for Imposing Lawyer Sanctions.

II. Findings of Fact as to Each Item of Misconduct of Which the Respondent is charged:

After considering all the pleadings and evidence before me, some pertinent portions of which are set forth below, I hereby make the following findings of fact that will provide an overview of the sequence of events that led us to these proceedings. This overview provides the framework for further findings as to all six counts of charged misconduct.

1. Claude Duboc was indicted by the United States of America in early 1994 in the Northern District of Florida on a multi-count indictment charging violations of Title 21 of the United States Code which proscribes drug smuggling. The indictment also included forfeiture claims under Title 18.

2. Duboc, who enjoyed dual citizenship in both France and the United States, was found in Hong Kong in March 1994 and arrested on the indictment. (Exhibit "H," page 10).

3. After Duboc waived extradition, he was transferred from Hong Kong to the Northen District of Florida

to respond to the charges. He was transported to Florida by way of Los Angeles.

4. Upon Duboc's arrival in Los Angeles, Attorney Robert Shapiro was retained by Duboc's ex-wife, Robin Duboc, and Attorney Mike Nassatir was retained by a third party. (TR, 754). Respondent was then contacted by Robert Shapiro to be Florida Counsel to Duboc in anticipation of trial in the Northern District of Florida.

5. Respondent was aware that a three million dollar fee had been discussed as between Shapiro and Robin Duboc, and according to Respondent, would be allocated at "one [million] for each lawyer." She anticipated the fees would come from private funding. (TR 760)

6. Before he met his client for the first time, Respondent met with Assistant U.S. Attorneys Gregory Miller and Thomas Kirwin at the United States Attorney's Office in Gainesville. (TR 122). On or about April 16, 1994, Respondent flew to Los Angeles and met with Robert Shapiro, Mike Nassatir and Claude Duboc. (Shapiro Deposition at page 10).

7. On April 19, 1994, a dinner meeting was held in Tallahassee to discuss Duboc's case. Participating in the discussion were Robert Shapiro, the Respondent, Tom Kirwin and Roy Atchison with the United States Attorney's Office and Carl Lilley, special agent with the drug enforcement administration. During this meeting, the issue of attorney's fees arose. A legal fee of three million was proposed, to be allocated at one million each for Shapiro, Bailey and Nassatir. (Shapiro Deposition at page 11, lines 15-23). Miller did not indicate that the request would be an unreasonable request. (TR123), (TR241-242)

8. Following the dinner meeting, Duboc, Tom Kirwin, Greg Miller, Roy Atchison, Respondent and Carl Lilley had a series of meetings to discuss a plea, repatriation of assets and payment of attorney fees. Lists of Duboc's assets were prepared by Respondent and Lilley. An ingenious plan was then proposed and negotiated by Respondent. Indeed, Respondent testified before the referee about how he manipulated the government: "And this list was delivered to the prosecutors and they were given overnight to let it marinate, because I wanted to whet their appetites for a deal to be made the following day, and the deal having been made would enable them to start transferring." (TR 772).

9. The ultimate strategy employed by Respondent was that Duboc would plead guilty and forfeit all assets to the United States Government in the hopes of a reduction of sentence based on what the Respondent described as "extraordinary cooperation." (TR 763). First, Duboc would identify and transfer all cash accounts from around the world into an account identified by the United States Attorney's Office.

10. The forfeiture of the real and personal properties held in foreign countries presented some nettlesome problems. Duboc owned two large estates in France and valuable car collections, boats, furnishings and art works. Most of these properties were physically located in France. The two estates required substantial infusions of cash for maintenance.

11. The idea proposed by Respondent was to segregate as asset, a particular asset, one that would appreciate in value over time, so that when it came time for Duboc to be sentenced following entry of a plea of guilty, the United States Government would not argue in opposition to a defense claim that part of the appreciation in value was not forfeitable to the

United States. Ultimately, the object was to sequester a fund which would not be entirely subject to forfeiture.

12. The identified asset was 602,000 shares of Biochem Pharma Stock. This would serve as a fund from which Respondent could serve as trustee and guardian of Duboc's French properties. Duboc's primary interest was to maximize the amount of forfeitures that would be turned over to the United States. This stock would provide a sufficient fund from which to market, maintain and liquidate the French properties and all other assets. Respondent explained that it would be prudent to hold the Biochem stock because the company was conducting promising research on a cure for AIDS, and the loss the government would suffer if large blocks of stock were dumped on the market. (Ex. 17 page 3).

13. Money was transferred immediately into a covert account identified by the United States Attorney's Office. Duboc provided written instructions to the various financial institutions and the orders were then faxed. On April 26, 1994, the Biochem stock certificates were transferred to Respondent's Swiss account at his direction. The Respondent provided the account number.

14. A pre-plea conference was held in the chambers of Chief Judge Maurice M. Paul prior to entry of Duboc's plea of guilty on May 17, 1994. Duboc then pled guilty in open court, and professed his complete cooperation with the government. (Ex. 10).

15. At no time prior to the entry of Duboc's plea of guilty on May 17, 1994 did Respondent, Duboc or any other person, including members of the United States Attorney's Office or Judge Paul, suggest that the stock which Respondent now claims to be his "in fee simple absolute" was anything other than an

intangible asset to be held in trust by Respondent for the purposes outlined above.

As to Count I

1. Count I alleges that the Respondent commingled trust funds from the sale of the Japanese Stock, the Obayashi and Pasco stock, into his personal Barnett Bank money market account.

2. These stocks, also referred to during the trial as the Japanese Stock, were entrusted to the respondent to liquidate and thereafter transmit the proceeds to the United States. (Complaint and Answer to Complaint, paragraph 23).

3. Respondent came into possession of the Obayashi and Pasco shares, sold them and deposited the funds of approximately $730,000 into his Credit Suisse Account on or about July 6, 1994. (Ex. 20, 21, 22, 31, 32, 33). The funds were then transferred into Respondent's Barnett Bank Money Market Account. The $730,000 was eventually paid to the United States Marshall on or about August 15, 1994. (Ex. 20, 21).

4. The Respondent admits that the funds were deposited in the account and that the account was neither a lawyer's trust account nor was it created or maintained by the Respondent as a separate account for the sole purpose of maintaining the referenced funds.

(Complaint and Answer to Complaint, paragraph 26).

5. In his answer to the complaint, Respondent denied that there were personal funds in the account at the time of the transfer. However this denial is refuted by the Respondent's own bank records and the accounting provided by Arthur Anderson & Co. (Ex. 20, 21).

6. Respondent argues in his trial brief that the deposit of the stock proceeds into his non-trust account was an

"inadvertent error" and that Respondent had no ulterior motive or intent. These claims are specious.

7. The evidence plainly shows that Respondent directed that Credit Suisse transfer the Obayashi and Pasco funds to his personal money market account at Barnett Bank in West Palm Beach. This was memorialized by three letters to the Swiss bank signed by the Respondent himself. (31, 32, 33). (TR 959).

8. The Referee finds by clear and convincing evidence that the respondent has violated Rule 4-1.5 (a) by failing to set up a separate account for the sole purpose of maintaining the referenced funds and also by commingling client funds with his own personal funds. Respondent's actions are aggravated by the fact that he minimizes his obvious intent and he has yet to account for the interest which accrued on the $730,000 during the time the funds were held by him in his private account.

As to Count II

1. Count II charges that the Respondent misappropriated sales and loan proceeds from the Biochem Pharma stock and commingled the sales and loan proceeds with his own funds.

2. Respondent makes two assertions in defense of this claim. First, he denies that he ever held the stock in trust for the benefit of has client or the United States Government. (Complaint and Answer to Complaint paragraph 27). Second, Respondent maintains that the stock was not subject to forfeiture.

3. These positions are clearly refuted by the evidence, and the Respondent's statements, assertions, claims and testimony about these matters are patently false.

The following recitation of relevant facts support this finding:

a. Following the dinner meeting described above, the subsequent "debriefings" of the defendant, and the other meetings that culminated in the entry of the plea, all parties understood that the nature of the transfer of Biochem Stock was that it be held in the form of a trust. (TR130-147, 251-260) (TR 435-481.) (TR 484).

b. Indeed, The U.S. Attorney's Office would not have permitted Duboc, a pretrial detainee on federal charges that carried a guideline sentence of life imprisonment, to transfer any assets of any description to anyone unless there was an understanding that any such assets might later be subject to forfeiture to the United States Government.

c. Even Co-Counsel Robert Shapiro and Edward Shohat support the existence of a trust arrangement that would allow a fund from which the French properties could be maintained with the ultimate beneficiary of the fund to be the United States Government. (Shapiro Deposition at page 17, lines 20-25, and page 18, lines I-3, page 43, line 24 and page 44, lines 1-4). Edward Shohat described the plea arrangement as an "excellent strategy" to benefit Duboc. (TR 521-522).

d. In addition to the U.S. Attorneys referenced above, co-counsel for Duboc and the client, Claude Duboc himself understood that the transfer of the stock was in the nature of a trust. (Ex. "H" pages 32-33).

e. Finally, and most persuasively, the presiding Judge in the criminal proceedings against Claude Duboc, the Honorable Maurice M. Paul, implicitly ratified this arrangement at the pre-plea colloquy

in chambers on May 17, 1994 and subsequently in formal proceedings when the plea was accepted.

f. Edward Shohat testified before the Referee regarding the details of the pre-plea conference. In pertinent part, that testimony was as follows:

> This trust agreement was spelled out for the Judge. . . . Well, the judge was told that the government had agreed that an asset, this stock – and I'm not sure whether the stock was identified to the Judge by name at the time – but that an asset which was anticipated to appreciate substantially in value had been chosen to be held by Lee Bailey for management of the assets, and that the purpose of that was because the assets would deteriorate substantially in value if they weren't maintained; and that Mr. Bailey was also going to assist the Court and defense counsel were going to assist the court by selling those assets for the government and trying to get the maximum value for the assets; at the same time, that the remainder value of the stock which was being segregated out would be returned to the court *at the end of the day*, and from that asset the Judge would be – a motion would be filed for a reasonable attorney's fee for Mr. Bailey and myself, and possibly Mr. Shapiro, but I don't think Mr. Shapiro had an appearance in at that point. But the attorneys would come to the court at the end of the day for attorneys' fees. [Emphasis by the referee.] (TR 520-521).

g. Respondent also confirmed and ratified that these holdings were to be in the nature of a trust. For instance, Respondent updated Edward Shohat on

the transfer of the stock to his Swiss account. (TR 517-518).

h. Respondent assured his client in January 1995 that he had charted the correct course for him. He alludes to the meeting of May 5, 1995 with Robert Shapiro and Ed Shohat wherein he was denied a visit with Duboc the following day and addresses the proposed conditions of Shohat's representation. He explains "I could have at this point rejected the silly conditions offered, applied for a healthy fee to Chief Judge Paul, and turned the balance of the Biochem stock back to the Government." (Ex. 36, page 4). Respondent also expresses his disdain for attorneys who often accept large fees and then plead their clients. (Ex. 36, page 5, footnote 16) and explains:

> You do not face the dilemma since I will be paid with Chief Judge Paul's approval – only that amount which is commensurate with the result achieved in your case, and the amount of work that went into it. Our interests are therefore in perfect alignment.

i. Further, in Respondent's letter to Judge Paul dated January 21, 1996, Respondent unequivocally confirms the agreement that the stock had been transferred to him in trust. In pertinent part, Respondent states in his letter to the Court that the reason he could not give Ed Shohat "half the money" was because:

> I told him that I had no authority to do that since I had in principal agreed to hold the funds *in the nature of a trust, with final approval for legal fees to be approved by Your Honor.*

Respondent continues to assure Judge Paul of the Judge's ultimate authority to approve fees, by stating:

> I interjected that payment of fees was to be ultimately approved by Your Honor and as I recall Your Honor merely nodded. I did this to impress on Mr. Shohat that without Court approval, any fees taken would be at the risk of disallowance. (Ex. 17, page 5).

j. Finally, in regard to the letter and in an effort 1o further protect himself and his interests, but contrary to the position he first asserted on January 12, 1996 through his partner David Schultz, Respondent advised the court in a footnote as to why he did not pay taxes on these monies derived from the Biochem stock:

> Their value on that date as calculated by the bank was $US 5,891,352.00. I viewed that as money held by me as an account in which the United States had an interest to this extent: after the payment of costs associated with the case, and fees approved by *Your Honor, any balance of the $5,891,352.00 remaining would revert to the United States.* Because of this view, I did not declare the funds to be income to myself. [Emphasis by the Referee.] (Ex. 17, page 5).

4. It was not until nearly two years after the transfer of the Biochem stock from Duboc to Respondent in trust that the Respondent first made the claim that the stock had been conveyed to him in "fee simple absolute." The precipitating factors in this tectonic shift in position were Claude Duboc's attempt to fire Respondent, a pending motion to substitute counsel for Respondent, the potential loss of what had theretofore been a "cash cow" for Respondent and most

importantly, a freeze order on all accounts associated with the stock which contained a provision requiring an accounting for all monies expended in furtherance of Respondent's trust obligations. (Ex. 1).

5. The testimony and exhibits, quantitatively and qualitatively support the establishment of a trust. Likewise, the testimony and exhibits quantitatively and qualitatively support a finding that the money was subject to forfeiture. All parties who participated in the pre-plea meetings were in agreement with this position at that time.

6. The terms of the plea and cooperation required the forfeiture of all property that had been acquired directly or indirectly by Duboc through unlawful drug trafficking activities and the identification of all assets which were used or intended to be used to facilitate the unlawful drug activities by the Defendant and any other individual. (Ex. 10, provisions 3(d) and 6).

7. The purpose of the plea agreement was to memorialize that which Respondent knew from the beginning: Everything his client owned was the product of unlawful drug trafficking activities. Indeed, Respondent wrote to Duboc "For a fellow with no legitimate source of income. . . . " (Ex. 36, page 6).

8. Respondent typed the preliminary list of assets disclosed by Duboc, which included the Biochem Stock (Ex. 7). At that time Respondent obviously knew that everything on that list had been acquired by Duboc through his drug trafficking activities.

9. In explaining the history of the case in a letter penned to Chief Judge Paul on January 21, 1996, Respondent writes that "Mr. Miller then said that his office wanted to see that I was protected on fees and expenses, including those expenses related to the

proposed liquidation efforts, and that he was prepared to transfer to my use a portion of the forfeited assets. I agreed." (Ex. 17, page 3).

10. It was only after Judge Maurice Paul ordered the return of the stock on January 25, 1996 (Ex. 2) that respondent had his Swiss attorney notify the Swiss authorities that the stock, or proceeds thereof, were obtained from or the product of illegal drug transactions. Respondent caused this to occur in an effort to thwart Judge Paul, knowing full well that the Swiss government would freeze the account. (Ex. 4, pages 2 and 3, 5, pages 7 and 8). Once again this action served Respondent's interest to avoid and not comply with a Court order.

11. The transfer of the 602,000 stock shares to the Respondent's Credit Suisse Investment Account occurred on or about May 9, 1994 (Request for Admissions and Answer, par. 1). Respondent sold shares of stock and also borrowed against the stock. The total amount derived was over $4,000,000.

12. The Respondent maintained a money market account at Barnett Bank in West Palm Beach. This account was not opened or maintained as a lawyer trust account, and on May 25, 1994, it had a balance of $7,192. (Complaint and Answer to Complaint paragraph 11), (Ex. 30). Respondent then transferred $3,514,945 in Biochem Pharma proceeds from the Credit Suisse Investment account into this money market account. (Ex. 20).

13. Of the over $3.5 million transferred to his money market account, Respondent transferred all but $350,000 into his personal checking account by December 1995. From his personal checking account, Respondent wrote checks to his private business enterprises totaling $2,297,696 and another $1,277,433 for other personal expenses or purchases.

(Ex. 5). Also, $138,946 was used by Respondent toward the purchase of his personal residence, this sum coming directly from the Barnett Bank money market account. (Ex. 5 page 3).

14. The referee is not swayed by the Respondent's argument that the lack of written agreement supports his position that no trust was established. Again he advances an inconsistent position. In point of fact, Respondent took great pride in not reducing any agreement to writing in order to protect his client at the time of trial. (TR 765-767).

15. The referee finds by clear and convincing evidence that Respondent misappropriated sales and loan proceeds derived from the Biochem Pharma, Inc. stock and commingled the sales and loan proceeds with his own funds in the money market account in violation of Rules 3-4.3, 4-8.4(b), 4-8.4(c), 5-1.1 and 4-1.15(a).

As to Count III

1. Count III alleges that Respondent misappropriated at least $309,861.00 of the Biochem stock sales and loan proceeds and further continued to expend funds after service and knowledge of the January 12, 1996 and January 25, 1996 order of Judge Paul.

2. On December 28, 1995 Respondent's money market account bank statement reflected a balance of $358,855.00. (Ex. 20).

3. As stated in the Paragraph 35 of the complaint and admitted by the Respondent in his answer:

> From January 12, 1996 through January 24, 1996, Respondent deposited funds [having no nexus to the Duboc representation] to his money market account in the total sum of

> $37,726.00 and disbursed funds [having no nexus to the Duboc representation] from the account in the total sum of $20,000.00, which transactions produced a January 24, 1996 closing account balance of $386,047.00, of which $350,000.00 represented sales/loan proceeds from the Biochem Pharma, Inc. stocks.

4. Respondent does not deny that approximately $3,000,000.00 was withdrawn from the Swiss account, deposited in his money market account maintained at the Barnett Bank, and used by Mr. Bailey for personal expense and "as legal fees." (Ex. 4, page 3).

5. Further, again as stated in Paragraph 36 of the complaint and admitted by Respondent in his answer, "By order of the court entered January 25, 1996, Respondent was directed, in part, to bring to the Court at a stated date, time and place:

> > . . . all shares of stock of Biochem Pharma, Inc., held by him, or by others, which represent the stock turned over to him by the Defendant, Claude Duboc, or Duboc's representatives. If the Biochem Pharma, Inc., Stock has been replaced by any other form of asset while in the possession of Mr. Bailey, then the replacement stock will be brought to this Court at the time of the above hearing.

6. Respondent continued to use the above referenced funds which had been deposited in the Barnett Bank money market account after service and knowledge of the January 12, 1996 and January 25, 1996 orders. (See also findings under Count IV).

7. Respondent asserted under oath that he did not see the January 25, 1996 orders until February 2, 1996 at

the contempt hearing before Judge Maurice Paul. However this is patently false, as the Respondent acknowledges that he studied the contents of the order fully one week *before* the February 1, 1996 hearing. (TR 939).

8. It is undisputed that from the evidence and even argued by Respondent in his trial brief (pages 4 and 5) that on January 25, 1996 Respondent disbursed funds originating from his Geneva account which he had transferred into the account on December 21, 1995.

9. Respondent transferred $290,000.00 from his Barnett money market account to his personal checking account on January 29, 1996 to cover at least nine checks dated January 25, 1996. These checks were used to pay off respondent's line of credit with Republic bank ($150,000.00), fund his business interest in the amount of $106,126.70 and his personal expense in the amount of $13,078.46. (Complaint and Answer to Complaint, paragraph 41 and admissions by respondent).

10. While Respondent argues in his brief that he had prior financial obligations to personal creditors and that the second order did not restrain him from meeting these obligations (TR 939), the Court finds otherwise. Clearly the order of January 29, 1996 specifically requires Respondent to bring with him the Biochem Pharma stock or any replacement asset. Respondent argues that the order did not encompass disbursing this cash because " . . . I see nothing in the order that prohibits distributing the proceeds of what had been a loan made against the shares, on which I was personably liable, in December, 1995." (TR 939). Clearly there were judicial restraints in place when the money was disbursed by respondent. (Ex. 1 and 2).

11. The referee finds by clear and convincing evidence that the Respondent has violated Rule 3-4.3 by engaging in conduct which is unlawful or contrary to honesty and justice, Rule 4-8.4 (b) by engaging in criminal misconduct, Rule 4-8.4 (c) by engaging in conduct constituting dishonesty, fraud, deceit or misrepresentation, and Rule 5-1.1 by misusing money held in trust.

12. The referee further finds by clear and convincing evidence that the actions of expending funds from the account after service upon and knowledge by the Respondent of the January 12, 1996 order constitute violations of Rules 3-4.3, 4-3.4(c) and 4-8.4(d)(a).

As to Count IV

1. Count IV alleges that the Respondent testified falsely under oath when he represented to the United States and to the United States District Court that he did not see the January 12, 1996 or January 25, 1996 orders until the morning of the civil contempt hearing before Judge Paul on February 2, 1996.

2. In his answer to the complaint, Respondent admits that in the February 1996 contempt proceedings before Judge Paul, he represented under oath to the United States and to the court that he did not, in fact, see the January 12, 1996 or January 25, 1996 orders until the morning of the hearing on February 2, 1996. Respondent denies that this testimony was false.

3. In support of this claim by Respondent, he submits his own testimony before this Court and the testimony of his associate, Ms. Toni Kennedy, as adduced at the proceedings held before the grievance committee which initiated these proceedings. (Ex. "P").

4. According to Ms. Kennedy, the January 12, 1996 order was faxed to the Respondent's law office on the date of its execution, January 12, 1996. That date was a Friday and the order was not read by anyone in the office until a staff member, Carolyn Gadigian, saw it the following day. The order was then faxed by Ms. Gadigian to the Respondent's residence in New York City. (Respondent's Answer to Request for Admissions, paragraph 11).

5. Ms. Kennedy was made aware of the order on Monday, January 15, 1996, and thereafter attempted to contact the Respondent. Ms. Kennedy eventually spoke with the Respondent over the phone late in the day on January 15th or at the latest on the morning of the 16th.

6. When Ms. Kennedy eventually spoke with the Respondent, she told him about the order. She also told him about the requirements for a complete accounting within ten days of the order and that the assets in the Swiss account were to remain frozen. Indeed, each and every material aspect of the January 12 order was discussed as between the Respondent and Ms. Kennedy on January 15.

7. Following the January 15 conversation, the Respondent eventually returned to West Palm Beach on January 18. He was in his office the entire day. He marshaled documents in support of the accounting and in advance of a meeting which he and Ms. Kennedy had with the United States Attorneys in Tallahassee on January 19.

8. According to Ms. Kennedy, the Respondent did not object to the terms of the order, but rather to the manner in which the order was obtained. In essence, Ms. Kennedy stated that the Respondent felt that the January 12 order had been obtained by the United States Attorneys from Judge Paul ex parte. Indeed,

the January 19 meeting between the United States Attorneys and the Respondent and Ms. Kennedy turned acrimonious with the Respondent accusing Assistant United States Attorney Greg Miller of obtaining the order from the Judge ex parte. Although Ms. Kennedy states that it was her understanding that the Respondent was aware of the order, she asserts that "I don't know whether he had read it or not." (Ex. "P" at page 139).

9. The Respondent reiterated his claim that he had not seen the January 12, 1996 or January 25, 1996 orders until the civil contempt proceedings were held before Judge Paul-beginning on February 2, 1996. That testimony, as well as the Respondent's denials of the allegations contained in Count IV are false for the following reasons:

   a. Respondent accused an Assistant United States Attorney of obtaining an ex parte order that he claimed he had never seen.

   b. Respondent marshaled documents in support of an accounting to be presented to the United States Attorneys at a meeting one week after entry of the order requiring the accounting.

   c. The Respondent had a conversation with Assistant United States Attorney Tom Kirwin about the terms of the January 12 order following its entry and prior to the January 19 meeting in Tallahassee.

   d. In a letter from Respondent to The Honorable Maurice M. Paul dated January 21, 1996, the Respondent plainly concedes that he knew of the terms of the order as early as January 16, 1996. (Ex. 17).

   e. Indeed, in footnote 1 of Respondent's January 21, 1996 letter to Judge Paul, the Respondent

refers to the manner, mode and method by which the order was entered, and to specific provisions of it. Respondent also characterizes his own client's law suit as "patently fraudulent" and that "Your Honor was persuaded to act on representations which are *at a minimum* subject to sharp challenge." Of course these assertions could not have been made *unless* the Respondent had seen the January 12 order.

f. The January 25, 1996 order was served upon the Respondent by fax transmission, United States mail, and personally by the U.S. Marshall's Service pursuant to the very terms of the order.

g. Respondent never appealed the entry of the order, never cried foul to Judge Paul about the ex parte order, and never complained to the Bar about the claimed unethical conduct by the U.S. Attorneys.

10. Respondent's assertions that he did not see the January 12 and January 25 orders prior to February 2 are patently ludicrous. The Court finds that by clear and convincing evidence that the Respondent lied when he testified before Judge Paul to that effect, that he lied when he denied the allegations in paragraph 45 of the complaint, that he lied when he denied the allegations contained in paragraph 46 of the complaint, and that he lied before this Court when he reaffirmed these falsehoods during his testimony before this Referee. These constitute obvious violations of Rules 3-4.3, 4-8.4(b), 4-8.4(c) and 4-3.3 (a)(1).

As to Count V

1. Count V alleges that by appropriating to his own uses and purposes the proceeds from the Biochem shares entrusted to him, Respondent deprived

Duboc and the United States Government of the value of the stock and the benefit Duboc sought to receive at the time of sentencing.

2. This referee has previously found that a trust was in fact established between Duboc and Respondent at the time the stock was transferred to Respondent.

3. Duboc and Respondent were comfortable with the notion that the stock would increase in value. By holding an asset that Duboc believed would increase in value, Respondent would assist Duboc at the time of sentencing because of Duboc's "extraordinary cooperation."

4. When the Biochem stock was transferred to Respondent, it was always anticipated that the increase in the stock value would sufficiently cover expenses in maintaining and liquidating Doboc's assets with a sufficient res to pay attorney fees after application and approval by Judge Paul.

5. The position taken by Respondent that he owned the stock in "fee simple absolute" and that he was entitled to not only the increase in value but to the sock as well was first brought to the attention of the United States Attorneys and Judge Paul on January 12, 1996 by Respondent's partner, David Schultz. This assertion was made in open court.

6. Respondent's position is unsupported by the evidence and has been rejected by the referee. Respondent first stated that during the initial meetings, fees were discussed in the range of one million dollars per attorney, for a total of three million. Next Respondent believed he was entitled to three million dollars by himself with $500,000 for expenses. (TR 776-779). By the time the plea was entered, roughly thirty days after Respondent met with his client, he

believed he was entitled to fees upward of six million dollars (602,000 shares of Biochem Pharma Stock). Respondent asserts, "I was told it was the stock or six million dollars, as of that date, that was mine." (TR 796).

7. There is no construction of this assertion consistent with the premise that ultimate approval and payment of fees would rest with Judge Paul. Respondent has never denied that approval of fees and expenses would have to be sought from Judge Paul. Even during the plea negotiations, when David McGee reinforced that approval of fees had to be approved by Judge Paul Respondent summed it up as follows:

> And I thought to myself, fine. When I go to Judge Paul I'm going to tell him, they gave me three and a half million and I used it to buy some stock, or they permitted me to take from my client three and a half million by agreeing to exempt it. They didn't give me anything. They never had it. And I used it to buy some stock. (TR 800).

8. Furthermore, the client would not benefit from the increase in stock, only Respondent. Under Respondent's construction of events, the conflict is apparent, because be took a financial position in the case that was contrary to his clients. The more Respondent received, the less his client would produce in this column at the time of sentencing. The conflict is blatant and obvious.

9. Put another way, if Respondent's position is accepted, Duboc would derive no benefit from any increase in stock value. Only the Respondent would

gain. This position is inconsistent with the agreement made in 1994, an agreement supposedly premised upon "extraordinary cooperation."

10. The final claim of misconduct under Count V relates to an alleged violation of Rule 4-1.8(b). This rule proscribes the use of information relating to representation of a client to the disadvantage of the client absent consent upon consultation with client. The essence of this claim relates to the Respondent's alleged self-dealing as the trustee for the French properties.

11. In a memorandum from Respondent to Raymond Duboc dated July 18, 1994, Respondent commented upon the mode and method he might employ to sell the Vallauris Property. (Ex. 48). In that memorandum, Respondent stated the following:

> Although I am ready, willing and able to sell the property if a *bona fide* offer is made, I am certainly in no hurry. Indeed, because of its breathtaking beauty, I am disposed to return here frequently until title passes to another.

13. There is no evidence that Claude Duboc ever gave his permission to Respondent to procrastinate in his efforts to sell the property so that Respondent could enjoy its "breathtaking beauty" at his whim and fancy. This Exhibit is the epitome of the kind of self-dealing that Rule 4-1.8(b) proscribes. The Bar has proven by clear and convincing evidence that the Respondent violated Rule 4-1.8(b).

Count VI has been dismissed

As to Count VII

1. Count VII alleges that the Respondent violated the rules prohibiting conflict of interest by his self-dealing, disclosure of confidential information and improper ex parte communications. The essence of these allegations can be found in letters from Respondent to Judge Paul dated January 4, 1996 and January 21, 1996.

2. With regard to the January 4, 1996 letter, in his answer to the Complaint, the Respondent denied the allegation. However, in his Request of Admissions, he admits the allegation.

3. Plainly Respondent wrote a letter to the Honorable Maurice Paul concerning a pending or impending matter. In the final paragraph of the letter authored by Respondent, he states the following:

> I have sent no copies of this letter to anyone, since I believe its distribution is within Your Honor's sound discretion." (Ex. 12).

4. Duboc appeared before the Honorable Maurice M. Paul and entered into a Plea and Cooperation Agreement on May 17. 1994. (Ex. 10).

5. Duboc pled guilty to Counts II and III of the indictment charging violations of Title 21, United States Code, Sections 952 and 963 and Title 18, United States Code, Section 1956(g).

6. As to Count II Duboc faced a maximum possible penalty of life imprisonment, a mandatory minimum 10 year period of imprisonment, a $4,000,000 fine, a 5 year term of supervised release and a $50.00 special monetary assessment.

7. As to Count III Duboc faced a maximum possible penalty of 20 years imprisonment, a fine in the amount of twice the value of the monetary instruments or funds involved in the transportation, transmission or transfer, a 5 year term of supervised release and a $50.00 special monetary assessment.

8. Pursuant to provision 3(c) of the Plea and Cooperation Agreement, Duboc agreed to complete and total cooperation.

9. Duboc had already pled guilty and was awaiting sentencing before the Honorable Judge Paul on charges carrying penalties of life in prison. His only chance for a reduced sentence would be by convincing Judge Paul that Duboc had completely and totally cooperated and had forfeited all of his assets.

10. Respondent compromised his client before the sentencing Judge by writing that:

    a. His client had pled guilty because he had no defense due to the strength of the case. It was only through Respondent's "experience and wisdom" did his client receive the advice that "was the best he could have received under all the circumstance surrounding his case." (Ex. 12; TR 534-537).

    b. His client chose this course only because it was his only option, not in a spirit of remorse or total cooperation.

    c. That his client was "a multimillionaire druggie."

    d. By consulting other counsel his client is no longer operating under the spirit of cooperation.

    e. That the new defense team had interests contrary to those of the client and the court.

11. Respondent went further and caused a second letter to be sent to Judge Paul on January 21, 1996. (Ex. 17).

12. Within this correspondence, which was copied to the U.S. Attorney's office, he threatens to seek an order to invade the attorney/client privilege to try to defeat the client's position that the stock was held in trust. (TR 537-540).

13. All of this correspondence was sent to protect Respondent's self-serving interests, control of Duboc's and the Government's money. The Court finds this to be based on the following testimony:

    a. Counsel contemplated the possibility of substantial attorney fees from the inception of representation of Claude Duboc. When Mr. Shapiro first contacted Respondent, Respondent states, "And rather than fight over this juicy case they decided to divide the pie and then divide it with me again if the case went to Tallahassee." (TR 754).

    b. The parties were gathered before Judge Paul on January 12, 1996 as a result of a motion filed on behalf of Duboc to substitute counsel.

    c. Respondent knew from talking with Duboc in the fall of 1995 that Duboc wanted the control of the money transferred to Coudert Brothers. (TR 893-894).

    d. The ex parte letter (Ex. 12) was prepared in anticipation of the hearing on Duboc's Motion to relieve Respondent as Counsel for the Defendant. Respondent wrote this letter in an effort to protect his financial stake in this case and to influence the Court to look unfavorably upon the motion to Substitute Counsel.

e. By the very term of the letter, the Respondent plainly evinced an intent to influence the presiding Judge in a brazen attempt to defeat a Motion for Substitution of Counsel. Respondent impugned the reputation of Mr. Ucinski, the attorney who Duboc was seeking to have substituted in his place and his client as well, and represented to the Court that this action was being taken under the guise of doing what was in the best interest of his client.

> Moreover, Mr. Ucinski long ago set himself up in an adversary position to myself, although he was less than candid about his machinations.
>
> Additionally, Mr. Ucinski – upon learning that I viewed a bill presented to me by him on behalf of his firm for services rendered to assist the United States in carrying out the terms of Mr. Duboc's plea agreement was patently inflated – caused a spurious complaint to be filed against me by a member of the Hong Kong Bar.
>
> Not without some pride of authorship, I believe that I set Mr. Duboc on a course which – if assiduously followed – would have caused his release at the earliest possible date, whatever Your Honor might have determined that to be. It is my fervent wish that if this noble purpose is to be confounded by lawyers who have some other agenda in mind, a clear watershed be documented at this juncture of the case.

All this was done with the ludicrous presumption that the Respondent's opinion, as the potentially displaced attorney, would be of any relevance or benefit to anyone.

14. The Referee finds by clear and convincing evidence that there was an improper communication in violation of Rule 4.3.5(a). It is uncontroverted that at the time the letter was sent, there were pending matters before the Honorable Maurice Paul, i.e., the sentencing of Duboc and the motion for substitution of counsel.

15. The referee finds by dear and convincing evidence that Respondent violated the Rules 4-3.5(a) and 4-3.5(b) by attempting to influence a judge and by communicating as to the merits of the case with the judge before whom the proceeding was pending. Respondent violated Rules 4-1.6(a) by revealing information relating to representation of a client and 4-1.8(b) by revealing information to the disadvantage and detriment of his client.

III. *Recommendation as to Whether or Not the Respondent Should Be Found Guilty*:

As to each count of the complaint I make the following recommendations as to guilt or innocence:

As to Count I

I recommend that the Respondent be found guilty and specifically that he be found guilty of violating Rule 4-1.15(a) by having personal funds in his money market account when he directed the transfer of the $730,000 from the liquidation of the Obayashi and Pasco stock from his Credit Swiss Account to his personal Barnett Bank Money Market Account.

As to Count II

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations:

3-4.3 (a lawyer shall not engage in conduct which is unlawful or contrary to honesty and justice);

4-8.4(b) (a lawyer shall not engage in criminal misconduct);

4-8.4(c) (a lawyer shall not engage in conduct constituting dishonesty, fraud, deceit or misrepresentation);

5-1.1 (money or other property entrusted to an attorney for a specific purpose is held in trust and must be applied only to that purpose);

4-1.15(a) (which mandate that a lawyer hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation, and that in no event may the lawyer commingle the client's funds with those of the lawyer) by misappropriating sale and loan proceeds from the Biochem stock and by commingling the sales/loan proceeds into his own money market account.

As to Count III

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations:

3-4.3 (a lawyer shall not engage in conduct which is unlawful or contrary to honesty and justice);

4-8.4 (a lawyer shall not engage in criminal misconduct);

4-8.4 (a lawyer shall not engage in conduct constituting dishonesty, fraud, deceit or misrepresentation);

5-1.1 (money or other property entrusted to an attorney for a specific purpose, is held in trust and must be applied only to that purpose); and

4-3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists), to wit:

by misappropriating the sale and loan proceeds from the Biochem stocks and continuing to expend funds from his Barnett Bank money market account after service and knowledge of the orders of Judge Paul.

As to Count IV

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations:

3-4.3 (a lawyer shall not engage in conduct contrary to honesty and justice); 4-8.4(b) (a lawyer shall not engage in criminal misconduct);

4-8.4(c) (a lawyer shall not engage in conduct constituting dishonesty, fraud, deceit or misrepresentation); and

4-3.3(a)(1) (provides that a lawyer shall not knowingly make a false statement of material fact or law to a tribunal), to wit: by stating under oath to representatives of the United States and to Judge Paul that he did not see

the January 12, 1996 and January 25, 1996 orders until February 2, 1996.

As to Count V

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations:

4-1.7(b) (a lawyer shall not represent a client if the lawyer's exercise of independent professional judgment in the representation may be materially limited by the lawyer's own interest);

4-1.8(a) (a lawyer shall not knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, except a lien granted by law to secure a lawyer's fee or expenses); and 1.8(b) (a lawyer shall not use information relating to a representation of a client to the disadvantage of the client).

As to Count VI

This count has been dismissed by The Florida Bar.

As to Count VII

I recommend that the Respondent be found guilty and specifically that he be found guilty of the following violations:

4-3.5(a) (a lawyer shall not seek to influence a judge, juror, prospective juror, or other decision maker except as permitted by law or the Rules of Court;

4-3.5(b) (in an adversary proceeding a lawyer shall not communicate or cause another to communicate as to the merits of the cause with a judge or an official before whom the proceedings are pending);

4-1.6(a) (a lawyer shall not reveal information relating to representation of a client);

4-1.8(b) (a lawyer shall not use information relating to the representation of a client to the disadvantage of the client unless the client consents after consultation);

4-1.8(a) (a lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, adverse to a client), to wit: by sending two letters to the judge concerning an unsentenced client that contained both information that was detrimental to his client and to protect his financial interest in continuing to represent his client.

IV. *Recommendation as to Disciplinary Measures to be Applied*:

I recommend that the Respondent be disbarred from the practice of law in Florida.

In making this recommendation, the referee has reviewed the applicable rules regulating the Florida Bar, the Rules of Discipline, the Standards for Imposing Lawyer Sanctions and the case law cited by the parties and otherwise applicable to these proceedings.

These authorities clearly indicate that, even without consideration of any aggravating factors, when there is conduct such as that proven by the Bar in this case, disbarment is appropriate. Those authorities, as more particularly

referenced by the Bar in its post trial memorandum, specifically indicate that disbarment is required under the following circumstances:

1. Commingling of Client Funds which were to be held in trust with the Lawyer's personal funds and failure to maintain the client funds in a specifically identified Lawyer's Trust Account.

2. Misappropriation of Client trust funds and failure to maintain said funds in a separate trust account.

3. Misuse and misappropriation of client funds and disobedience of a court order and dishonest conduct before a tribunal.

4. Violation of the rules prohibiting dishonesty and false statements to a tribunal.

5. Violation of the rules proscribing conduct which creates a conflict of interest with the client.

6. Disclosure of Confidential communication without authorization of the client.

7. Use of information obtained during the course of representation to the disadvantage of the client.

Before the Referee's discussion of aggravation and mitigation, the Referee notes that any of the violations of the rules regulating the Florida Bar which have been proven by the Bar as set forth above, would singularly warrant the recommended discipline. Collectively, the numerous violations, all of which are serious and egregious, plainly warrant permanent disbarment.

A. *Aggravating Factors*

The Court finds the following aggravating factors to be present under Standard 9.22 of the Florida Standards for Imposing Lawyer Sanctions.

9.22(b) dishonest or selfish motive;

9.22(c) a pattern of misconduct;

9.22(d) multiple offenses;

9.22(f) submission of false statements;

9.22(g) refusal to acknowledge the wrongful nature of conduct; and,

9.22(i) substantial experience in the practice of law.

The Respondent has been a member of the Florida Bar since 1989 and was admitted to the Massachusetts Bar in 1960. According to the Respondent, he is a member of the The Supreme Court of the United States, every circuit in the United States, the Tax Court, the Federal Court of Claims, and as of the time of the hearing was admitted in North Carolina and California pro hac vice on two cases. (TR 740).

Aggravation is apparent under Standards 9.22(b), (c) and (d) as set forth above. Aggravation is also apparent under Standard 9.22(f) insofar as the proceedings before Judge Paul are concerned. The Court also notes at this point that although it was neither charged nor argued by the Bar, the Respondent testified falsely in this disciplinary proceeding, and this serves as further aggravation under Standard 9.22(f).

Aggravation under Standard 9.22(g) is also plainly evident to the Referee. At no time during this disciplinary proceeding did the Respondent, either personally or through Counsel, acknowledge the wrongful nature of any aspect of his behavior at any time relevant to these proceedings.

The sole exception to this finding is the equivocal characterization of the Respondent's conduct in regard to Count I of the complaint. In that instance, the Respondent argued that his actions were an "inadvertent error shared by all parties to the transaction.

The Court notes parenthetically that Respondent is responsible for compliance with the Rules Regulating the Florida Bar, and the U.S. Government has no responsibility to stop him from engaging in conduct which he knows is proscribed. It goes without saying that Mr. Duboc bears no responsibility for Respondent's transgressions.

Aggravation under 922(i) will be discussed in the context of the Respondent's personal history and past disciplinary record.

Counsel for the Bar sought to introduce into evidence three exhibits numbered (53, 54 and 55), as substantive evidence in support of the claims of ethical improprieties on the part of Respondent. The Referee disallowed its admission for that purpose for reasons which appear on the face of the record. In sum, the Referee found that the events in what has been referred to as the "McCorkle Matter" took place after those giving rise to those proceedings; therefore they are of no relevance to Respondent's state of mind at the time he represented Claude

Duboc. Second, the Magistrate Judge in the McCorkle Matter, Hon. James G. Glazebrook, relied on the findings of Judge Paul in Duboc to support his finding of civil contempt in McCorkle.

Of course the ruling of the Referee in regard to the Bar's purpose in seeking admission of exhibits 53, 54 and 55 is not germane to the Referee's analysis of whether Respondent's conduct in McCorkle serves as aggravation under Standard 9.22. Plainly, a finding of contempt by a sitting Judge is an aggravating factor which this Referee must consider. Without going into unnecessary detail, suffice it to say that the Referee finds that Judge Glazebrook's recommendation of civil contempt is plainly supported by the exhibits referenced above. That this should serve as aggravation is obvious and indisputable.

V. *Personal History and Past Disciplinary Record:*

After the finding of guilt and prior to the recommendation of discipline to be imposed pursuant to Rule 3-7.6(k)(1)(D), I considered the following personal history and prior disciplinary record of the Respondent, to wit:

Age: 67 years

Dated admitted to Bar: 1989

Prior disciplinary convictions and disciplinary measures imposed therein:

Respondent was censured in 1970 in the State of Massachusetts and Suspended for one year for permission to appear pro hac vice, as listed below:

1. Censured September 16, 1970 by Justice Kirk, Commonwealth of Massachusetts, Supreme Judicial Court. (Ex. 52).

2. Suspension for one year of privilege of applying to permission to appear pro hac vice, Judge Morris Pashman sitting as a Master for the Supreme Court of New Jersey and later ratified by the Supreme Court of New Jersey *In the Matter of F. Lee Bailey*, 273 A.2d 563 (N.J. 1971). (Ex. 51).

While the Court finds these disciplinary actions to be too remote in time to serve as aggravation under Standard 9.22(a), the Court finds that the characteristics noted by those justices shed some light on the behavior addressed in this report.

In concluding his findings in his Order of September 16, 1970, Justice Kirk writes of the Respondent:

> [H]e is unwilling to concede that he could have been wrong; he believes that he alone should decide if "special circumstances" exist to justify a departure from the established norms of conduct; he studies rules and judicial orders with a purpose of evasion rather than with a will to comply with their spirit for the general good. These attitudes bespeak a self-esteem of such proportions as to challenge description. From it, there has evolved, as designated counsel have suggested, consciously or unconsciously, a philosophy of extreme egocentricity for the defense of criminal cases involving the use of news media. . . .

Similarly, the Supreme Court of New Jersey writes of the Respondent's Conduct:

> This highly improper conduct cannot be allowed to pass without discipline. It indicates a state of mind, or so-called philosophy, that treats as justified, a course of action by a lawyer completely foreign to and destructive of our system of justice and the true responsibilities of an advocate.

In sum, as Justice Kirk noted in his opinion thirty years ago:

> All things considered, disbarment as a disciplinary measure would not be essentially wrong. But it would close the door to possible reconsideration of values and standards by one who is still young in the profession. Censure, on the other hand, may prove to be of doubtful efficacy. It is for the respondent to resolve that uncertainty by his future conduct.

Unfortunately, that uncertainty has been resolved against the Respondent. Through the conduct exhaustively described above, it is plain that very little has changed in the thirty years since Justice Kirk noted that the Respondent " . . . studies rules and judicial orders with a purpose of evasion rather than with a will to comply with their spirit for the general good."

Indeed, since the disciplinary actions noted above, Chief Judge Paul and Magistrate Judge Glazebrook and this Referee have had numerous opportunities to assess and characterize the demeanor and credibility of the Respondent. In each instance, the various Judges and Justices have employed circumspect and eloquent ways of saying the same thing: "The Respondent is a liar." This Referee concurs.

Perhaps the most salient expression heard by the Referee throughout these proceedings was uttered by Mr. Shohat when he unequivocally stated that attorney's fees were subject to an approval by Judge Paul "at the end of the day." "At the end of the day," the Respondent has forfeited his privilege to practice law in the state of Florida. Frankly, it is difficult for this Referee to conceive of a more egregious set of circumstances than those which Mr. Bailey has brought upon himself.

VI. *Statement of Costs and Manner in Which Cost Should be Taxed*:

The Bar neither submitted nor argued for the imposition of a specific dollar amount of cost that should be taxed against the Respondent. However, in light of the discipline recommended above, and should the Supreme Court concur, all reasonable cost incurred at the grievance committee level, all administrative cost and other ancillary cost associated with the prosecution of this disciplinary action should be taxed against Respondent.

Dated this ___ day of ___, 2000.

CYNTHIA A. ELLIS
Referee

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Report of Referee has been served on F. Lee Bailey, Esq., 1400 Centrepark Blvd., Suite 909, West Palm Beach, Florida 33401-7412; Donald Beverly, Esq., 823 North Olive Avenue, West Palm Beach, Florida 33401; Debra J. Davis, Esq., The Florida Bar, Suite C-49, Tampa Airport Marriott Tampa, Florida

33607; David R. Ristoff, Esq., Branch Staff Counsel, The Florida Bar, Suite C-49, Tampa Airport Marriott, Tampa, Florida 33607; Terrance Edward Schmidt, Esq., 1301 Riverplace Blvd., Suite 1818, Jacksonville, Florida 32207-9022; and John Anthony Boggs, Esq., The Florida Bar, 650 Apalachee Pkwy., Tallahassee, Florida 32399-6523, this ___ day of ___, 2000.

_____
Referee